

REMARKS

Applicant has carefully considered the Examiner's rejections in the Office Action dated March 18, 2005, and respectfully requests reconsideration based upon the manifest differences between the present invention and the cited references.

I. THE INVENTION

The present invention is a recliner seat for use in conjunction with conventional hunting tree stand support systems, wherein the seat comprises a rectangular support frame including upper and lower members, a plurality of fittings positioned on the support frame, and a rectangular sling seat including flexible elements extending from its upper and lower corners, where the plurality of fittings on the support frame are configured for removably attaching the flexible elements of the sling seat. The present invention allows for increased adaptability for the user through multiple positioning with simple manipulation of its flexible detachable elements "therein allowing for complete retraction and thus the user's complete access to the entire platform." As claimed, the present invention is very different from the conventional tree stands and seats therefor.

II. THE EXAMINER'S OBJECTIONS AND REJECTIONS

The Examiner rejected claims 39, 52, 54, 56, 57 and 64 under 35 U.S.C. § 112 as "indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention."

The Examiner also rejected claims 33-37, 39-40, 43, 50-52, 54-57 and 60 under 35 U.S.C. § 102 (b) as being anticipated by Geier U.S. Patent No. 3,165,356 (Geier). In

the opinion of the Examiner, "Geier shows a plurality of fittings at 47, 44 flexible elements 43."

Lastly, the Examiner rejected claims 33-37, 40-41, 50-55 and 63-64 under 35 U.S.C. § 103 (a) as being unpatentable over Davis in view of Morris U.S. Patent No. 3,321,780 (Morris). According to the Examiner, "Davis shows the claimed seat with the exception of the plurality of fittings and flexible elements" and "Morris shows of fittings 21, 26 for attaching flexible elements 27 of as flexible body support to a U-shaped (14) portion of a support frame."

III. THE EXAMINER'S REJECTIONS SHOULD BE RECONSIDERED AND WITHDRAWN

As indicated above, in the March 18, 2005 Office Action, the Examiner rejected claims 39, 52, 54, 56-57 and 64 under 35 U.S.C. § 112 as "indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.". Accordingly, Claims 39 and 54 have been amended to clarify the claimed invention, and Claims 52 and 56-57 were previously withdrawn from consideration. However, regarding Claim 64, the Examiner rejected this claim as claiming both tree stand and recliner seat limitations. The applicant respectfully disagrees, as this claim is directed to a recliner seat for use with a tree stand, and not a tree stand itself. The claim simply states that the recliner seat includes "at least one of said lower members is affixed to said tree stand." Applicant respectfully requests that these rejections be reconsidered and withdrawn.

Next, Claims 33-37, 39-40, 43, 50-52, 54-57 and 60 stand rejected under 35

U.S.C. § 102 (b) as being anticipated by Geier. Applicant respectfully disagrees. It is black letter law that for a reference to be anticipatory, it must teach each and every claimed limitation of the invention -- Geier falls far short of this requirement.

Briefly, Geier discloses a body support for use in space vehicles to provide support and comfort to a person in a seated or lying position who is subjected to large acceleration or deceleration forces. According to Geier, the support comprises a “webbing 11 of cross-woven flexible cords attached about [the support’s] periphery to a rigid framework in a manner whereby the webbing is held by the frame in a taut spread condition.” (Col. 3, lns. 13-16) This is very different from the present invention as claimed. Indeed, the claimed invention is directed at a “tree stand recliner seat” comprising “a rectangular support frame including upper and lower members; a plurality of fittings positioned on said support frame; and a substantially rectangular sling seat including flexible elements extending from its upper and lower corners; wherein said upper and lower members are configured for connecting said recliner seat with an existing tree stand support system; and wherein said plurality of fittings on said support frame are configured for removably attaching said flexible elements of said sling seat.”

First, nowhere in Geier teach or disclose anything like a recliner seat for use in connection with a tree stand support system. Second, Geier fails to disclose or teach a recliner seat having a support frame configured for connection to an existing tree stand support system. Rather, the support and restraint means taught by Geier is specially designed for incorporation into a vehicle that is capable of generating significant “G” forces on a passenger. Nothing in Geier suggests that such a design may be configured for use in conjunction with a tree stand, or anything like it. Third, nowhere does Geier

suggest or disclose a recliner seat for use with existing tree stand support systems where the support frame is configured for removably attaching a sling seat to allow the user (i.e., a hunter on a tree stand) to quickly and quietly remove the sling seat in order to provide more room for standing, and conversely easily replace the sling seat in order to sit down again while he waits. Nothing in Geier even comes close to suggesting such a recliner seat. Accordingly, the applicant respectfully requests that this rejection be reconsidered and withdrawn.

Next, the Examiner rejected Claims 33-37, 40-41, 50-55 and 63-64 under 35 U.S.C. §103 as being unpatentable over Davis in view of Morris. In the opinion of the examiner, Davis teaches “the claimed seat with the exception of the plurality of fittings and flexible elements”, and Morris teaches “fittings 21, 26 for attaching flexible elements 27 of as flexible body support to a U-shaped (14) portion of a support frame”. Applicant respectfully disagrees. Neither patent, either alone or in combination, describes or discloses the claimed invention.

As stated in a prior response, Davis discloses a portable tree stand comprising a platform, a supporting frame and brace, and a folding seat member. Once again, the applicant respectfully submits that this is different from the present invention. Nowhere does Davis teach or suggest a removable seat for use with an existing tree stand such that it provides greater ease of maneuverability for a user positioned on the tree stand. Rather, Davis discloses a tree stand platform having a folding seat incorporated therein. Indeed, Davis fails to disclose fittings configured for removably attaching the flexible elements of a sling seat to a support frame that may be used with any existing tree stand platform. In contradistinction, Davis discloses a folding seat, and not a removable seat.

Davis does not teach the fittings or flexible elements as claimed for the removable attachment of the sling seat to the support frame, which enable the present invention to be used with any existing tree stand platform or support system. Turning briefly to Morris, disclosed is merely a conventional “hammock” of the type comprising a bed formed of a woven fabric or canvas, ordinarily suspended between the ends of a unitary frame or stand. Nothing suggests that such a conventional hammock can be used or combined with an existing tree stand support system.

Furthermore, applicant respectfully points out that, standing on their own, the cited references provide no justification for the combination asserted by the Examiner.

“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.” ACS Hospital Systems Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

The cited references provide no such suggestion or incentive for the combination suggested by the Examiner. Initially, applicant disagrees with the Examiner’s opinion as to the teachings of both Davis and Morris. As discussed above, Davis discloses a portable tree stand comprising a platform, a supporting frame and brace, and a folding seat member. However, as pointed out previously, Davis fails to teach a removable seat (for use with an existing tree stand) comprising fittings configured for removably attaching the flexible elements of the sling seat to the support frame, and the flexible elements as claimed for the removable attachment of the sling seat to the support frame fittings. Davis merely provides tree stand that has a folding seat affixed thereto (i.e., which is not removably attached to its frame). Further, applicant disagrees that there is any motivation or suggestion to combine Davis’ tree stand platform with the hammock of

Morris.

Referring next to Morris, applicant agrees with the Examiner that Morris discloses “fittings 21, 26 for attaching flexible elements 27 of as flexible body support to a U-shaped (14) portion of a support frame”. However, contrary to the Examiner’s suggestion, there would be no motivation for anyone to modify the tree stand platform of Davis with the any teachings from the hammock of Morris. Morris merely teaches a conventional hammock having a hammock bed attached to a frame. But, the seat according to Davis is already foldable, and therefore would not be modified such that the seat is connected to the frame in a manner similar to that of Morris’ hammock bed. In fact, nothing in either Davis or Morris, either alone or in combination, teach or suggest all of the elements of applicant’s claimed invention. Therefore, applicant submits that the rejection of Claims 33-37, 40-41, 50-55 and 63-64 as being unpatentable over Davis in view of Morris is improper and should be reconsidered and withdrawn.

Moreover, the obviousness rejection could only be the result of a hindsight view with the benefit of the applicant’s specification. However,

“To draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction – an illogical and inappropriate process by which to determine patentability. The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made.”(citations omitted) Sesonics v. Aerosonic Corp., 38 U.S.P.Q. 2d. 1551, 1554 (1996).

In addition, the combination advanced by the Examiner is not legally proper – on reconsideration the Examiner will undoubtedly recognize that such a position is merely an “obvious to try” argument. Both Davis and Morris are unsuitable for use with existing tree stand support systems as taught and claimed by the present invention. Indeed,

nothing in Davis or Morris reveals any functional or design choices that could possibly include all of the applicant's invention. Accordingly, the present invention as claimed is not obvious in view of Davis in combination with Morris. At best it might be obvious to try such a combination. Of course, "obvious to try" is not the standard for obviousness under 35 U.S.C. §103. Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 91 (Fed. Cir. 1986).

Under the circumstances, applicant respectfully submits that the Examiner has succumbed to the "strong temptation to rely on hindsight." Orthopedic Equipment Co. v. United States, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed.Cir. 1983):

"It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claim in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law." Id.

Applicant submits that the only "motivation" for the Examiner's combination of Davis and Morris is provided by the teachings of applicant's own disclosure. No such motivation is provided by the references themselves.


Therefore, as is evidenced by the above remarks, the present invention, for the first time, discloses a recliner seat for use with existing tree stand support systems where the seat includes a support frame with upper and lower members and a plurality of fittings, such that a sling seat can be removably connected to the upper and lower members of the support frame, which is configured for connection to an existing tree stand support system. A system such as this is neither taught nor suggested anywhere in the cited references.

IV. CONCLUSION

In view of the foregoing remarks, Applicant submits that the pending claims represent a patentable contribution to the art and are in condition for allowance. Early and favorable action is respectfully requested.

Dated: September 19, 2005

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David-M. Hill", is written over a horizontal line.

David-M. Hill
Reg. No. 46,170
WARD & OLIVO
708 Third Avenue
New York, New York 10017
(212) 697-6262